

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: INSULIN PRICING
LITIGATION**

**Case No. 2:23-md-3080 (BRM)(RLS)
MDL No. 3080**

**JUDGE BRIAN R. MARTINOTTI
JUDGE RUKHSANAH L. SINGH**

THIS DOCUMENT RELATES TO: 2:25-cv-00503,
2:25-cv-00515,
2:25-cv-00519,
2:25-cv-00521,
2:25-cv-00525,
2:25-cv-00526
(SELF-FUNDED PAYERS TRACK)

MOTION FOR ENTRY OF ORDER TO SHOW CAUSE

TO THE HONORABLE COURT:

NOW COME Defendants Eli Lilly And Company; Novo Nordisk Inc.; Sanofi-Aventis U.S. LLC; CVS Pharmacy, Inc.; Caremark Rx, LLC; Caremark LLC; CaremarkPCS Health, LLC; Express Scripts, Inc.; Express Scripts Administrators, LLC; Medco Health Solutions, Inc.; ESI Mail Pharmacy Service, Inc.; Express Scripts Pharmacy, Inc.; and OptumRx, Inc. (collectively “Defendants”), through their undersigned attorneys, and respectfully submit this Motion for Entry of an Order to Show Cause pursuant to Case Management Order No. 14 (“CMO No. 14”) ¶ 5(c)(i) (Dkt. 315). A proposed Order is attached as

Exhibit A.

This Court entered CMO No. 14 on October 16, 2024—more than seven months ago. In direct violation of that order, nine Plaintiffs—eight represented by Kelly & Grossman, LLP (“Kelly Plaintiffs”),¹ and one represented by the Ferraro Law Firm (“Ferraro Plaintiff”)²—failed to serve executed Plaintiff Fact Sheets

¹ “Kelly Plaintiff” refers to Steubenville Electrical Welfare Fund (2:25-cv-00503); IBEW Local 163 (2:25-cv-00503); Black Diamond (2:25-cv-00515); City of Athens, Ohio (2:25-cv-00515); IBEW Local 613 and Contributing Employers Family Health Fund (2:25-cv-00519); IBEW Local 613 and Contributing Employers Retiree Health Fund (2:25-cv-00519); Diocese of Wheeling-Charleston (2:25-cv-00521); and Local 49 Health and Welfare Fund (2:25-cv-00525).

² “Ferraro Plaintiff” refers to C.H. Robinson Worldwide, Inc. (2:25-cv-00526).

(“PFS”) within the time required by CMO 14 or any agreed extension. Pursuant to CMO 14 ¶ 5(c)(i), Defendants respectfully request this Court to issue an Order to Show Cause why these nine Plaintiffs’ cases should not be dismissed in their entirety.

I. BACKGROUND

Pursuant to CMO 14, each of the nine Plaintiffs was required to serve an executed PFS no later than April 14, April 30, and May 7, 2025. This accounts for the fact that the Ferraro Plaintiff and the Kelly Plaintiffs requested and received an extension from Defendants. None of these nine Plaintiffs served PFS responses by their required deadline even with the extensions. Accordingly, Defendants served Notices of Failure to Serve pursuant to CMO 14 ¶ 5(b)(i) on April 15, May 2, and May 14, 2025. *See Exs. B-J.* Each Notice was served via email to Plaintiffs’ attorneys of record, David Grossman of Kelly & Grossman, and Natalia M. Salas of the Ferraro Law Firm with a courtesy copy to the Co-Lead Counsel’s designees, David Buchanan of Seeger Weiss; Mark Pifko of Baron Budd; Brandon Bogle of Levin Papantonio; and Benjamin Widlanski of Kozyak Tropin & Throckmorton. Plaintiffs still have not served their PFS responses or requested further extension. *See CMO 14 ¶ 5(b)(ii).* And while the Ferraro Plaintiff responded, promising to serve a fact sheet and production within the 14-day period to cure, it failed to do so. Ex. K.

II. ARGUMENT

Pursuant to CMO 14 ¶ 5(c), Defendants request the Court issue an Order to Show Cause requiring Plaintiffs to serve a completed PFS within 14 days. Plaintiffs' failure to provide PFS responses violates CMO 14, defeats the streamlined discovery process the Court ordered, and delays the "identif[ication of the] core issues" in the MDL. *See* ECF No. 291 at 12. Defendants respectfully ask the Court to enforce CMO 14 by requiring the Kelly Plaintiffs and Ferraro Plaintiff to each promptly serve an executed and substantially complete PFS within 14 days, or have their complaints dismissed. *See* CMO 14 ¶ 5(c)(i).

III. CONCLUSION

As provided by the Court's CMO 14, Defendants respectfully request that the Court enter an Order to Show Cause with a 14-day deadline as to these nine Plaintiffs that failed to serve a PFS pursuant to CMO 14.

Dated: May 29, 2025

/s/ Brian W. Carroll

MCCARTER & ENGLISH, LLP

Brian W. Carroll
Four Gateway Center
100 Mulberry St.
Newark, NJ 07102
(973) 639-2020
bcarroll@mccarter.com

DAVIS POLK & WARDWELL LLP

James P. Rouhandeh (*pro hac vice*)
David B. Toscano (*pro hac vice*)
450 Lexington Ave.
New York, NY 10017
(212) 450-4000
rouhandeh@davispolk.com
david.toscano@davispolk.com

Davis Polk & Wardwell LLP

Neal A. Potischman (*pro hac vice*)
Andrew Yaphe (*pro hac vice*)
900 Middlefield Road
Redwood City, CA 94063
T: (650) 752-2000

Attorneys for Defendant Novo Nordisk Inc.

Respectfully submitted,

/s/ Liza M. Walsh

WALSH PIZZI O'REILLY FALANGA LLP

Liza M. Walsh
Katelyn O'Reilly
Three Gateway Center
100 Mulberry St., 15th floor
Newark, NJ 07102
(973) 757-1100
lwalsh@walsh.law
koreilly@thewalshfirm.com

JONES DAY

Michael R. Shumaker (*pro hac vice*)
Julie E. McEvoy (*pro hac vice*)
William D. Coglianese (*pro hac vice*)
Melissa L. Patterson (*pro hac vice*)
51 Louisiana Ave. NW
Washington, DC 20001
(202) 879-3939
mrshumaker@jonesday.com
jmcevoy@jonesday.com
wcoglianese@jonesday.com
mpatterson@jonesday.com

Attorneys for Defendant Sanofi-Aventis U.S. LLC

/s/ Melissa A. Geist

REED SMITH LLP

Melissa A. Geist
Julia A. López
506 Carnegie Center, Suite 300
Princeton, NJ 08540
(609) 514-5978
mgeist@reedsmith.com
jalopez@reedsmith.com

KIRKLAND & ELLIS LLP

James F. Hurst (*pro hac vice*)
Diana M. Watral (*pro hac vice*)
Ryan Moorman (*pro hac vice*)
Jason A. Feld (*pro hac vice*)
333 West Wolf Point Plaza
Chicago, IL 60654
(312) 862-2000
james.hurst@kirkland.com
diana.watral@kirkland.com
ryan.moorman@kirkland.com
jason.feld@kirkland.com

Attorneys for Defendant Eli Lilly and Company

/s/ Brian Boone

O'TOOLE SCRIVO, LLC

Thomas P. Scrivo

Young Yu

14 Village Park Road

Cedar Grove, NJ 07009

(973) 239-5700

tscrivo@oslaw.com

yyu@oslaw.com

ALSTON & BIRD LLP

Brian D. Boone

1120 S. Tyron St., Ste. 300

Charlotte, NC 28203

(704) 444-1000

brian.boone@alston.com

ALSTON & BIRD LLP

Elizabeth Broadway Brown

1201 W. Peachtree St. NW, Ste. 4900

Atlanta, GA 30309

(404) 881-7000

liz.brown@alston.com

ALSTON & BIRD LLP

Kelley Connolly Barnaby

950 F. Street, NW

Washington, D.C. 20004

(202) 239-3300

kelley.barnaby@alston.com

/s/ Jason R. Scherr

MORGAN, LEWIS & BOCKIUS LLP

Jason R. Scherr

Elise M. Attridge

Lindsey T. Levy

1111 Pennsylvania Avenue, NW

Washington, DC 20004

(202) 739-3000

jr.scherr@morganlewis.com

elise.attridge@morganlewis.com

lindsey.levy@morganlewis.com

Attorneys for Defendants Express Scripts, Inc.; Express Scripts Administrators, LLC; ESI Mail Pharmacy Service, Inc.; Express Scripts Pharmacy, Inc.; and Medco Health Solutions, Inc.

Attorneys for Defendant OptumRx, Inc.

/s/ Benjamin Hazelwood

MARINO, TORTORELLA & BOYLE, P.C.

Kevin H. Marino

John D. Tortorella

437 Southern Boulevard

Chatham, New Jersey 07928

(973) 824-9300

kmarino@khmarino.com

jtortorella@khmarino.com

WILLIAMS & CONNOLLY LLP

Enu Mainigi

Craig Singer

R. Kennon Poteat III

A. Joshua Podoll

Benjamin Hazelwood

Daniel Dockery

680 Maine Avenue, S.W.

Washington, D.C. 20024

(202) 434-5000

emainigi@wc.com

csinger@wc.com

kpoteat@wc.com

apodoll@wc.com

bhazelwood@wc.com

ddockery@wc.com

*Attorneys for Defendants CVS
Pharmacy, Inc.; Caremark Rx, L.L.C.;
CaremarkPCS Health, L.L.C.; and
Caremark, L.L.C.*